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Appellant: Patsy A. Krautkramer et al. Docket No.: 19,167
Serial No.: 10/664,260 Group: 3761
Confirmation No: 3401 Examiner: Hand, Melanie Jo
Filed: September 17, 2003 Date: November 2, 2006
For: ASYMMETRIC MULTILAYER ABSORBENT ARTICLE

Appeal Brief Transmittal Letter

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37, transmitted herewith is an Appeal Brief pursuant to the Notice of Appeal which was mailed on October 9, 2006.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), which is due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

Respectfully submitted,

PATSY A. KRAUTKRAMER ET AL.

By: Paul Yee

Paul Yee

Registration No.: 29,460

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I, Judith M. Anderson, hereby certify that on November 2, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

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ARTICLE

Brief on Appeal to the Board of Patent Appeals and Interferences

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is filed in response to the Final Rejection having a mailing date of 07/20/2006 for the above-identified application. A Notice of Appeal was filed October 9, 2006.

Real Party in Interest

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of all rights to the invention of the above-identified application.

Related Appeals and Interferences

To the knowledge of Appellants, Appellants' legal representative, or assignee, there are no other known related appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1 – 22 are pending in the application.

Claims 1 – 22 have been rejected.

Claims 1 – 22 are under appeal.

Status of Amendments

No amendments were filed subsequent to the Final Rejection.

Summary of Claimed Subject Matter

The invention of the sole independent Claim 1 provides:

An absorbent feminine care article (20) having a longitudinal direction (22), a lateral direction (24), first and second longitudinally opposed end portions (72, 72a), and an intermediate portion (76) located between the end portions. Particular disclosure can, for example, be found in the original specification at page 6, line number {28} paragraph.

The article comprises:

a liquid-permeable cover (26);

a baffle (28); and

an absorbent body (30) sandwiched between the cover and baffle (e.g. page 6, line number {28} paragraph);

wherein

said absorbent body includes an intake layer (32) and a longitudinally asymmetric shaping layer (36);

said shaping layer is positioned between said cover and said baffle, and has a longitudinal shaping-layer length (80) and a lateral shaping-layer width (82);

said intake layer is positioned between said cover and said shaping layer and has a longitudinal intake-layer length (90) and a lateral intake-layer width (92);

said intake layer has an area extent which is smaller than an area extent of said shaping layer (e.g. page 6, line number {28} paragraph);

said shaping layer has first longitudinal half-length (84), a second longitudinal half-length (86), a narrow-section (62), a wide-section (64), and a transition-section (66);

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said transition-section is located between said narrow and wide sections of the shaping layer, the transition-section having lateral side edges (78) which interconnect lateral side edges (70) of the narrow-section of the shaping layer with corresponding lateral side edges (74) of the wide-section of the shaping layer (e.g. page 6, line number [28] paragraph);
said wide-section of the shaping layer includes a maximum lateral width of the shaping layer and includes a terminal end edge (54) located in said first half-length (84) of the shaping layer;
said narrow-section of the shaping layer includes a terminal end edge (58) located in said second half-length (86) of the shaping layer; and
said intake layer is longitudinally offset toward an article region which is delimited by said first half-length of the shaping layer (e.g. page 6, line number [28] paragraph).

Grounds of Rejection To Be Reviewed on Appeal

Grounds 1

Claims 1 – 22 have been alleged to be actionable under 35 U.S.C. § 103 based on U.S. Patent 6,608,236 to Burnes et al. (Burnes).

Argument

The claims on appeal

Claims 1 – 22 are on appeal, and are set forth in the enclosed CLAIMS APPENDIX.

Prior art relied on by the Examiner

In the Final Rejection, the Examiner has relied on the following art:

U.S. Patent 6,608,236 to Burnes et al. (Burnes).

Arguments

For the reasons set forth below, Appellants respectfully submit that the Examiner's rejection should be reversed. It is also respectfully submitted that for the reasons set forth below, the claims do not stand or fall together.

Grounds 1

It is respectfully submitted that claims 1 – 22 are patentable over U.S. Patent 6,608,236 to Burnes et al. (Burnes). Accordingly, the Examiner's action under 35 U.S.C. § 103(a) should be reversed.

It is respectfully submitted that the Examiner's rejections under 35 U.S.C. §103, based on the teachings of the cited references are not proper, and that the teachings of the cited references do not render obvious a structure having the combination of components called for by Appellants' claimed invention. It is respectfully submitted that the Examiner has not established "*prima facie*" that a proper consideration of the cited reference would disclose or suggest Appellants' claimed invention.

It is well accepted that, as a minimum, a *prima facie* case of obviousness must contain the following elements:

- 1) there must be a basis in the reference for a modification;
- 2) there must be a reasonable expectation of success – obvious to "try" is not the standard; and
- 3) the prior art must render obvious the invention as a whole.

In addition, it is not appropriate to engage in hindsight. It is inappropriate to pick and choose isolated elements from various prior art references and combine them so as to yield the invention in question when such combining would not have been an obvious thing to do at the time in question. *Panduit Corporation v. Dennison Manufacturing Company*, 227 USPQ 337 (Fed. Cir. 1985).

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Gordon*, 733 F.2d at 902, 221 USPQ at 1127. *In re Fritch*, 23 USPQ 2nd 1780, 1783-1784 (Fed. Cir. 1992).

It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 Fed. 2nd 982, 987. 18 USPQ 2d 1885, 1888 (Fed. Cir. 1991). *In re Fritch*, 23 USPQ 2nd 1780 at 1784 (Fed. Cir. 1992). One cannot use

hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 Fed. 2d at 1075, 5 USPQ 2d at 1600. *In re Fritch*, 23 USPQ 2nd 1780 at 1784 (Fed. Cir. 1992). Where the cited references do not teach how to make the particular combinations needed to arrive at the invention called for by Appellants' claims, the claimed invention cannot be deemed "obvious". *Ex parte Levengood*, 1993.

It is also well established that a prior art reference must be evaluated as an entirety and that the prior art must be evaluated as a whole. *W.L. Gore and Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983). Where neither any reference considered in its entirety, nor the prior art as a whole, suggests the combination claimed, the invention is non-obvious. *Fromson v. Advance Offset Plate, Inc.*, 225 USPQ 26 (Fed. Cir. 1985).

In the present application, however, the cited reference, when properly considered in its entirety, does not disclose or suggest the combination called for by the claimed invention.

With regard to Claims 1 – 22: Burnes describes a distribution material for personal care products. Burnes also describes a personal care product system having a generally rectangular distribution/retention layer, and a generally "hourglass", pad shaping layer. Each layer has a stain length ratio of 0.5 or less and the distribution/retention layer has a saturation profile of 4 or less. Additionally, the distribution/retention layer extends into both longitudinal half-sections of the shaping layer. As recognized by the Examiner, Burnes shows a layer 9 having two wider sections at the ends and a narrow section connecting the two wider sections, with two respective transition sections between the narrow sections and the wide sections.

Burnes, however, does not disclose or suggest an arrangement in which the narrow-section of the shaping layer includes a terminal end edge located in the second half-length of the shaping layer, as called for by Appellants' currently presented claims. In accordance with the structural arrangements recognized by the Examiner, the identified "narrow-section" of the Burnes product is an interconnecting section located between the two, wider end sections of the Burnes product. The narrow section of the Burnes product

does not have a terminal end edge. Instead, the "narrow-section" of the Burnes product has terminal edges only at the sides of the product.

Burnes also does not disclose or suggest an arrangement in which the intake layer is longitudinally offset toward an article region, which is delimited by the first half-length of the shaping layer and away from the narrow-section. To the contrary, the structures taught by Burnes locate the intake layer in the center of the Burnes product.

The Examiner has urged that it would be obvious to modify the shape of the product to fit a thong undergarment. The Examiner has also urged that it would be obvious to align the central region of the intake layer with the flow of menses, which would "require" shifting the intake layer forward. Contrary to the unsupported assertion of the Examiner, however, such factors would not require shifting the intake layer "forward". It is submitted that a person of ordinary skill would understand that the shape of thong underwear might be consistent with contemporary fashion, but is inconsistent with the requirements for effectively absorbing menses from the female anatomy. Contrary to the Examiner's allegations, it is submitted that a person of ordinary skill would understand that a "shifting forward" of the intake layer would tend to undesirably misalign the intake layer from the location at which menses is typically discharged from the female anatomy. As a result, a person of ordinary skill would consider the changes urged by the Examiner to be inappropriate. It is, therefore, readily apparent that the modifications needed to synthesize Appellants' claimed invention would be non-obvious to a person of ordinary skill, and would become apparent only by using the claimed invention as an instruction manual or "template" to generate a reconstruction in a manner that impermissibly employs hindsight.

It is, therefore, readily apparent that a proper consideration of Burnes would not disclose or suggest the invention called for Appellants' presented claims. Accordingly, the Examiner's action under 35 U.S.C. §103 should be **reversed**.

With regard to Claim 3: For the reasons previously set forth regarding claims 1 – 22, it is submitted that a proper consideration of Burnes would not disclose or suggest the configurations set forth in claim 3. In addition, Burnes teaches that the layers 2, 3, 4, 6, 7 and 8 which are centered in the narrow, intermediate region of the personal care product.

As a result, Burnes fails to disclose or suggest a configuration where the narrow-section of the shaping layer substantially avoids extending into an article region that is delimited by the first longitudinal half-length of the shaping layer, as called for by Appellants' claimed invention.

It is, therefore, readily apparent that a proper consideration of Burnes would not disclose or suggest the invention called for by Appellants' presented claims. Accordingly, the Examiner's action under 35 U.S.C. §103 should be **reversed**.

With regard to Claim 4: For the reasons previously set forth regarding claims 1 – 22, it is submitted that a proper consideration of Burnes would not disclose or suggest the configurations set forth in claim 4. In addition, Burnes clearly teaches that layers 2, 3, 4, 6, 7 and 8 are to be located in the narrow region of the personal care product. As a result, Burnes fails to disclose or suggest a configuration where the intake layer substantially avoids extending into a region of the article that is delimited by said narrow-section of the shaping layer, as called for by Appellants' currently presented claims.

It is, therefore, readily apparent that a proper consideration of Burnes would not disclose or suggest the invention called for by Appellants' presented claims. Accordingly, the Examiner's action under 35 U.S.C. §103 should be **reversed**.

With regard to claim 5: For the reasons previously set forth regarding claims 1 – 22, it is submitted that a proper consideration of Burnes would not disclose or suggest the configurations set forth in claim 5. In addition, Burnes teaches layers 2, 3, 4, 6, 7 and 8 which are located in the middle of the central, narrow region of the personal care product. As a result, Burnes fails to disclose or suggest a configuration where at least about 55% of the intake-layer length is located in an article region that is delimited by the first half-length of the shaping layer, as called for by Appellants' currently presented claims.

It is, therefore, readily apparent that a proper consideration of Burnes would not disclose or suggest the invention called for by Appellants' presented claims. Accordingly, the Examiner's action under 35 U.S.C. §103 should be **reversed**.

With regard to claim 6: For the reasons previously set forth regarding claims 1 – 22, it is submitted that a proper consideration of Burnes would not disclose or suggest the configurations set forth in claim 6. In addition, Burnes teaches layers 2, 3, 4, 6, 7 and 8 which are located in the middle of the central, narrow region of the personal care product. As a result, Burnes fails to disclose or suggest a configuration where at least about 55% of the area of the intake layer is located in an article region that is delimited by the first half-length of the shaping layer, as called for by Appellants' currently presented claims.

It is, therefore, readily apparent that a proper consideration of Burnes would not disclose or suggest the invention called for by Appellants' presented claims. Accordingly, the Examiner's action under 35 U.S.C. §103 should be reversed.

With regard to Claim 19: For the reasons previously set forth regarding claims 1 – 22, it is submitted that a proper consideration of Burnes would not disclose or suggest the configurations set forth in claim 19. In addition, the examples disclosed by Burnes teach that the top (e.g. intake) layer and the middle (e.g. distribution/retention) layer have a density that is equal to or greater than the density of the bottom (e.g. shaping) layer. As a result, Burnes fails to disclose or suggest a configuration where the intake layer has an intake-layer density which is less than the shaping-layer density, as called for by Appellants' currently presented claims.

It is, therefore, readily apparent that a proper consideration of Burnes would not disclose or suggest the invention called for Appellants' presented claims. Accordingly, the Examiner's action under 35 U.S.C. §103 should be reversed.

Conclusion

For the reasons set forth in the above remarks, it is respectfully submitted that the Examiner's rejections under 35 U.S.C. §103 based upon Burnes should be reversed. It is respectfully submitted that Appellants' claimed invention is neither disclosed nor suggested by the cited reference. Additionally, the Examiner has not established a *prima facie* case that the particular combinations of components called for by Appellants' claims would be suggested by a proper consideration of the cited reference. To the contrary, it is

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contrary, it is readily apparent that when the cited reference is considered in its entirety and the reference is taken as a whole, a proper combination of the cited reference would not teach Appellants' claimed invention. Only in light of Appellants' present disclosure and the impermissible use of hindsight would a person of ordinary skill be directed to the significant changes and modifications needed to reconfigure the various components to arrive at Appellants' claimed invention. It is, therefore, readily apparent that the configurations called for by Appellants' currently presented claims are patentable over cited references.

Accordingly, it is respectfully submitted that Claims 1 – 22 are in allowable condition, and that the Examiner's actions should be reversed.

Please charge the fee for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I, Judith M. Anderson, hereby certify that on November 2, 2006 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

Typed or printed name of person signing this certificate:

Judith M. Anderson

Signature:

Judith M. Anderson

CLAIMS APPENDIX

1. An absorbent feminine care article having a longitudinal direction, a lateral direction, first and second longitudinally opposed end portions, and an intermediate portion located between said end portions, said article comprising:
 - a liquid-permeable cover;
 - a baffle; and
 - an absorbent body sandwiched between the cover and baffle;wherein
 - said absorbent body includes an intake layer and a longitudinally asymmetric shaping layer;
 - said shaping layer is positioned between said cover and said baffle, and has a longitudinal shaping-layer length and a lateral shaping-layer width;
 - said intake layer is positioned between said cover and said shaping layer and has a longitudinal intake-layer length and a lateral intake-layer width;
 - said intake layer has an area extent which is smaller than an area extent of said shaping layer.
 - said shaping layer has first longitudinal half-length, a second longitudinal half-length, a narrow-section, a wide-section, and a transition-section;
 - said transition-section is located between said narrow and wide sections of the shaping layer, the transition-section having lateral side edges which interconnect lateral side edges of the narrow-section of the shaping layer with corresponding lateral side edges of the wide-section of the shaping layer;
 - said wide-section of the shaping layer includes a maximum lateral width of the shaping layer and includes a terminal end edge located in said first half-length of the shaping layer;
 - said narrow-section of the shaping layer includes a terminal end edge located in said second half-length of the shaping layer; and

said intake layer is longitudinally offset toward an article region which is delimited by said first half-length of the shaping layer.

2. An article as recited in claim 1, wherein said intake-layer length is smaller than said shaping-layer length, and said intake-layer width is smaller than said shaping-layer width.
3. An article as recited in claim 1, wherein said narrow-section of the shaping layer substantially avoids extending into an article region that is delimited by said first longitudinal half-length of the shaping layer.
4. An article as recited in claim 1, wherein said intake layer substantially avoids extending into a region of the article that is delimited by said narrow-section of the shaping layer.
5. An article as recited in claim 1, wherein at least about 55 % of the intake-layer length is located in an article region that is delimited by the first half-length of the shaping layer.
6. An article as recited in claim 1, wherein at least about 55 % of the area of the intake layer is located in an article region that is delimited by the first half-length of the shaping layer.
7. An article as recited in claim 1, wherein an inboard boundary of said narrow-section of the shaping layer is delimited by an upper-limit lateral dimension of not more than about 62 mm.
8. An article as recited in claim 1, wherein an inboard boundary of said narrow-section of the shaping layer is delimited by an upper-limit lateral

dimension of not more than about 98% of said maximum lateral width of the shaping layer.

9. An article as recited in claim 1 wherein an inboard boundary said wide-section of the shaping layer is delimited by a lower-limit lateral dimension of not less than about 40 mm.

10. An article as recited in claim 1 wherein an inboard boundary said wide-section of the shaping layer is delimited by a lower-limit lateral dimension of not less than about 60 % of said maximum lateral width of the shaping layer.

11. An article as recited in claim 1 wherein said transition-section of the shaping layer extends between a minimum lateral dimension of said wide-section of the shaping layer, and a maximum lateral dimension of said narrow-section of the shaping layer; the shaping layer has a lower-limit lateral dimension; and the lower-limit lateral dimension of the shaping layer is located in the second half-length of the shaping layer.

12. An article as recited in claim 1, wherein said transition-section of the shaping layer has tapering side edges that are substantially linear.

13. An article as recited in claim 1, wherein said transition-section of the shaping layer has tapering side edges that are curvilinear.

14. An article as recited in claim 1, wherein said transition-section of the shaping layer has tapering side edges, and at least a portion of each side edge is substantially outwardly concave.

15. An article as recited in claim 1, wherein said intake layer has an intake-layer area, said shaping layer has a shaping-layer area, and the entirety of said intake-layer area lies within an article region that is delimited by said shaping layer area.

16. An article as recited in claim 1, wherein a terminal end edge of said intake layer is inwardly spaced from said terminal end edge of the narrow-section of the shaping layer by a narrow-end distance of at least a minimum of about 30 mm.

17. An article as recited in claim 1, wherein said narrow-section of the shaping layer includes a pair of laterally opposed side edges which are substantially parallel to each other.

18. An article as recited in claim 1, wherein said shaping layer includes at least about 5 wt% superabsorbent material and not more than about 75 wt% superabsorbent material.

19. An article as recited in claim 1, wherein said shaping layer has a shaping-layer basis weight of at least about 100 g/m² and not more than about 400 g/m², a shaping-layer density of at least about 0.06 g/cm³ and not more than about 0.3 g/cm³, a shaping-layer total absorbent saturation capacity of at least about 5 grams and not more than about 30 grams of menses simulant A, and a shaping-layer area of at least about 100 cm² and not more than about 150 cm²; and said intake layer has an intake-layer density which is less than the shaping-layer density, has an intake-layer total absorbent capacity which is less than the shaping-layer total absorbent capacity, and has an intake-layer area which is less than the shaping-layer area.

20. An article as recited in claim 17, wherein said shaping layer includes a stabilized airlaid, fibrous material having binder fiber therein.
21. An article as recited in claim 17, wherein said intake layer includes a stabilized airlaid, fibrous material having binder fiber therein.
22. An article as recited in claim 17, wherein said article further includes asymmetric narrow-section-wings

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EVIDENCE APPENDIX

(none)

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RELATED PROCEEDINGS APPENDIX

(none)